COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RULEMAKING GOVERNING UNBUNDLING)

) D.T.E. 98-32-E

OF SERVICES RELATED TO NATURAL GAS)

COMMENTS OF THE LOW-INCOME UTILITY WEATHERIZATION AND FUEL ASSISTANCE NETWORK

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These are the Comments of the Low-Income Energy Affordability Network (LEAN), MASSCAP, the Massachusetts Energy Directors Association, Action, Inc. and others, collectively the Low-Income Utility Weatherization and Fuel Assistance Network referred to in G.L., c. 25, §19. These Comments are filed in response to the Department's Notice of Rulemaking, dated December 17, 1999, and Proposed Regulations 220 C.M.R. 13.00. We appreciate the opportunity to address the Department at the public hearing on February 4, 2000, and intend to comment further at that time.

The Low-Income Network is responsible for, among other things, implementation of the low-income electricity efficiency programs mandated by G.L. c. 25, §19; low-income natural gas efficiency programs provided for in various orders of this Department; and the federal fuel assistance program, also known as the Low Income Home Energy Assistance Program (LIHEAP). These Comments are based on the experience and expertise of the Low-Income Network with respect to utility efficiency programs and fuel assistance, as well as on the knowledge and experience of the Network with respect to the impacts of natural gas rates on low-income families.

In summary, the Low-Income Network is concerned that a head-long rush into another utility restructuring will result in higher residential prices and diminished consumer protections. As was done to some extent in the General Court's restructuring of the electricity industry, these consumer dangers should be offset by provisions to protect residential consumers from price gouging, fraud, and other abuses. In particular, low-income families should be protected -- as was also done by the General Court in its restructuring of the electricity industry -- by

• the establishment of rules for the "default" service likely to be the only residential option,

• the affirmation of low-income discounts and standardizing of eligibility therefor,

• mandated efficiency programs to give consumers the ability to control their gas bills,

• the application of all existing consumer protections on the supply of natural gas, and

• adoption of additional protections that restructuring makes necessary, such as penalties for slamming.

This is the first formal review of the restructuring of the industry that provides the fuel for heating half of Massachusetts families' homes. Few industries are as important to the health and well-being of all who live in the Commonwealth. Care should be taken to at least assure a level of protection that equals that provided by the General Court to electricity customers.

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Restructuring has not benefitted vulnerable customers

The historical experience of utility restructuring to date is that it raises prices for the most vulnerable and benefits those who are already economically powerful. Indeed, the wholesale natural gas restructuring that has already occurred has substantially widened the gap between residential and industrial natural gas prices in Massachusetts. As shown in the graph on the next page, under cosst-based regulation, residential natural gas prices averaged about 40 percent higher than industrial prices in the years before wholesale restructuring. Now residential rates are more than double industrial rates.

This market segmentation -- charging what the market will bear -- is not a necessary result of market forces, as displayed by the review of oil prices to the same customer groups shown on the subsequent page. The price gap for oil is substantially lower and headed sharply down rather than sharply up.

Chart:

Massachusetts Residential Gas Price as Percentage of Industrial Price, 1976-1995

Chart:

MARKET SEGMENTATION: Residential Price as Percentage of Industrial Price, 1986-1995 [Gas and Oil]

While it is still early to definitively assess the benefits of Massachusetts electricity restructuring, Division of Energy Resources data make clear who is receiving the early benefits. As of last November, ten percent of the large commercial and industrial load[(1)]

and eight percent of the municipal streetlighting load had found an advantage in the competitive marketplace. The score for ordinary residential consumers: one-tenth of one percent. Thus, so far, industrials are reaping one hundred times the benefit of Massachusetts families from electricity restructuring.

It is certainly not too early to assess the benefits of long distance telephone deregulation -- massive benefits for the business customers who use large quantities of long distance and high-tech services offset by large local telephone rate increases for ordinary consumers. Rates for long distance, which most residential customers use relatively rarely, dropped sharply while costs were shifted to local service. In 13 years of deregulation (1984-1996), the price of local home telephone service jumped 52 percent. For big business, long distance is the largest part of the bill; long distance prices dropped at least 50 percent.[(2)]

Proponents of deregulation often cite the airline industry as evidence of the wisdom of deregulation.[(3)]

And, indeed, it is true that prices (per mile, adjusted for inflation) fell 1.7 percent per year between 1978 and 1994. However, prices per mile before deregulation had been falling even faster -- 2.5 percent per year. Not only did price declines diminish after deregulation, but also service quality was substantially degraded as deregulated airlines scheduled fewer non-stop destinations, reduced the amount of seating space per passenger (as well as other amenities, such as meals), and served 141 fewer outlying airports.[(4)]

Airline deregulation has also been characterized by severe market segmentation. For example, while the general price level has been declining, prices at airports dominated by one or two airlines have risen by as much as 26 percent since deregulation. Fares for Pittsburgh (90 percent of enplanements by USAir), are up 21 percent, Chattanooga (76 percent Delta, 20 percent USAir) up 26 percent.[(5)]

Prices for other captive market segments, such as last-minute travelers (typically business travelers but also anyone with a personal emergency), have also risen sharply.[(6)]

Similarly, airlines segment their customers by selectively providing free travel, looser carry-on baggage restrictions, and more space around their seats.[(7)]

Restructuring does not automatically provide benefits for everyone. If restructuring of the natural gas industry is to provide broad-based benefits, it must be carefully managed.

Residential and Low-Income natural gas customers in the Commonwealth should be provided at least the same price protection as electricity customers

The General Court provided a structured default rate, as well as standardized low-income discounts, to protect customers during the restructuring of the electricity industry. The General Court required all electricity distribution companies to establish

a default service rate to its customers ... who, for any reason, have stopped receiving such service,... through competitive bidding; provided, however, that the default service rate so procured shall not exceed the average monthly market price of electricity; and provided, further, that all bids shall include payment options with rates that remain uniform for periods of up to six months....The department may authorize an alternate generation company or supplier to provide default service. [St. 1997, c. 164, §193; G.L. c.164, §1B(d)]

In sharp contrast, the Department's proposed rules for natural gas provide no standards whatsoever for the pricing of default service. Proposed rule 13.03(4).

In restructuring the electricity industry, the General Court also did

require that distribution companies provide discounted rates for low income customers comparable to the low-income discount rate in effect prior to March 1, 1998...The cost of such discounts shall be included in the rates charged to all customers of a distribution company. Each distribution company shall guarantee payment to the generation supplier for all power sold to low-income customers at said discounted rates. Eligibility for the discount rates established herein shall be established upon verification of a low-income customer's receipt of any means tested public benefit, or verification of eligibility for the low-income home energy assistance program, or its successor program, for which eligibility does not exceed 175 per cent of the federal poverty level ... Each distribution company shall conduct substantial outreach efforts ... and shall report to said division [of energy resources], at least annually, as to its outreach activities and results. Outreach may include establishing an automated program of matching customer accounts with lists of recipients of said means-tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified;***Not later than March 1, 1999 the department shall conduct an investigation and report to the joint committee on government regulations regarding the cost and benefits of expanding eligibility for the discount rates ...to any low-income customer who is eligible for any means-tested public benefit for which eligibility does not exceed 175 per cent of the federal poverty level based on gross household income...provide to said committee any legislative recommendations. [St. 1997, c. 164, §193; G.L. c.164, §1F(4)(i)]

Prior to the termination of the seven year period of the standard service transition rate, the department shall, in consultation with said division, evaluate the effects of electricity restructuring on the affordability of electric power for low-income customers....The department shall, in its recommendations, consider whether or not to modify said discount by establishing a sliding scale low-income discount program. [St. 1997, c. 164, §193; G.L. c.164, §1(4)(ii)]

The Department's proposed natural gas regulations are totally silent on the subject of low-income rates, although they do track the General Court's provision of a Farm Discount [see St. 1997, c. 164, §315 and proposed regulation §13.03(3)].

There is an additional issue of protection that arises uniquely in the natural gas industry. Since about half of Massachusetts homes are heated with gas, and the primary focus of LIHEAP (fuel assistance) benefits is to support payment of heating bills, the Low-Income Network has established relationships with the natural gas distribution utilities. Among other things, these arrangements assure that payments to the utilities are timely made with a minimum of administration (for example, Network agencies can write one monthly check to cover a large number of customers) and that customers are promptly credited for their fuel assistance payment. Experience in the natural gas pilot program demonstrated that these arrangements may not withstand restructuring without a clear set of expectations and rules.

Problems in the administration of fuel assistance arose most commonly where suppliers issued bills separately from the distribution companies. In some cases, billing was irregular and customer service personnel were difficult to reach. In the most egregious case, a supplier claimed payment default eight days after billing -- as soon as it learned of the customers' receipt of fuel assistance and, thus, low-income; the supplier in this way used fuel assistance as a tool for redlining.

The simplest and most efficient solution to these issues is to require distribution companies to accept all fuel assistance payments and to apply them first to outstanding supplier balances. This will keep income information away from suppliers and thus inhibit redlining.[8]

It will also protect low-income customers from termination by their suppliers.

Consumer protections with respect to natural gas should be at least as strong as they are with respect to electricity

When it restructured the electricity industry, the General Court provided a wide range of consumer protections. The Department's proposed rules for the natural gas industry adopt some of these protections but ignore many others. While we have not yet performed an exhaustive comparison of the General Court's electricity restructuring statute with the Department's proposed natural gas restructuring regulations, it is clear that there are large and serious gaps in the Department's proposal. These include:

• <u>Rules for suppliers</u>

The General Court required that all existing electricity consumer protections be applied to suppliers as well as distribution utilities. [St. 1997, c. 164, §193; G.L. c. 164, §1F(7)] The Department's proposed rules appear to dilute this protection for natural gas customers. Proposed regulation §13.04(3). There is, for example, no mention of the winter moratorium requirements.[(9)]

There should also be consistency with requirements of electricity suppliers. For example, there should be standard price disclosures so pricing claims can be readily compared. Compare St. 1997, c. 164, §193, G.L. c. 164, sec. 1F(7) with proposed regulation 13.05(2)(a).

• Service quality

The General Court required that electric utility service quality be maintained at no less than current levels. [St. 1997, c. 164, §193; G.L. c. 164, §1F(7)] The Department's proposed natural gas regulations are silent.

• Confidentiality

The General Court required protection of electricity customers' records, including metering, billing, and other information. The Department's proposed regulations would only protect a natural gas customer's historic usage information. Proposed Regulation §13.04(4)(a).

• Aggregation

There is considerable evidence that the only hope for a competitive residential market in electricity is via aggregation, i.e., competition among suppliers for the load of all (or nearly all) customers in a city, town, or other pre-existing grouping (such as low-income customers) without incurring the costs of individual marketing. For this reason the General Court specifically authorized municipal and other aggregation. [E.g., St. 1997, c. 164, §247; G.L. c. 164, §135] The ability to aggregate natural gas at the same time may make municipal aggregation more likely to succeed. It is also likely to provide lower prices than otherwise since suppliers save the substantial costs of individual marketing.

• Intermediate penalties

The General Court provided intermediate penalties of fines-- short of the Draconian sanction of license revocation -- to enable the Department to enforce consumer protection rules effectively. [St. 1997, c. 164, §193; G.L. c. 164, §1F(7) and, re slamming,[(10)]

§1F(8)(d) and (e)] The Department should seek similar authority from the General Court with respect to natural gas.

• Price reporting

In order to keep track of whether or not the theoretical benefits of electricity industry restructuring actually came true, the General Court mandated the Division of Energy Resources to track prices and the impact of restructuring on the various classes of customers. [St. 1997, c. 164, §§48, 50; G.L. c. 25A, §§7, 11E] The Department should either assure that the Division takes on the same task with respect to natural gas or the Department should itself assume the burden of collecting the factual information needed to assess the wisdom of its course.

Over the course of many months, the General Court carefully fashioned a set of protections necessary in the transition to a restructured utility market. The Department should not now ignore these wise provisions but rather should adopt them for the natural gas industry.

Natural gas customers should have at least the same opportunity to control their utility bills through efficiency as do electricity customers

The General Court recognized the importance of energy efficiency by mandating substantial utility-ratepayer-funded programs to encourage investments in efficiency. This included a permanent set-aside for low-income programs.

Each restructuring plan shall include...proposed programs to provide universal service for all customers; proposed programs and recovery mechanisms to promote energy conservation and demand-side management;... [St. 1997. c. 164, §193; G.L. c.164, §1A(1a)]

At least 20 percent of the amount expended for residential demand-side management programs by each distribution company in any year, and in no event less than the amount funded by a charge of 0.25 mills per kilowatt-hour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive low-income residential demand-side management and education programs. The low-income residential demand-side management and education programs shall be implemented through the low-income weatherization and fuel assistance program network and shall be coordinated with all gas distribution companies in the commonwealth with the objective of standardizing implementation. [St. 1997, c. 164§ 37; G.L. c.25, § 19]

Although the General Court thus requires electric utilities to coordinate efficiency programs with natural gas utilities, the Department's proposed regulation for natural gas utilities is utterly silent on the subject.

It may be argued that natural gas differs from electricity because price increases, even the tiny increases to support an efficiency program, will damage the ability of natural gas to compete against oil. However, an examination of customer behavior in response to changes in the price of natural gas belies such an assertion.

About half Massachusetts natural gas revenues are from the residential sector, according to the U.S. Department of Energy's Energy Information Administration. As the next page illustrates, the natural gas share of the gas-and-oil market (dashed line) has been virtually unchanged while the price of natural gas swung from nearly 20 percent above oil, to about even, to nearly 30 percent higher than oil. The page that follows shows the increasing market share of natural gas among gas customers -- Bay State Gas has averaged a 2.8 percent customer gain per year since 1992 (while natural gas prices were skyrocketing in relation to oil).

As the subsequent two pages show, gas is equally competitive in the commercial and industrial sectors irrespective of price. Market share (lines with triangles) has steadily climbed while gas prices have gyrated up and down with respect to oil.

We are in a period of significant growth in the demand -- and consequent upward price pressurre -- for this increasingly scarce and valuable clean energy resource. As the recent cold-weather shortage of natural gas for interruptible and utility customers underscores,[11] efficiency programs benefit all customers as well as those who participate directly by both easing supply constraints and relieving upward price pressures. Demand for natural gas will increase further as new natural gas electricity plants come on line. This Department should therefore mandate substantial natural gas efficiency programs as part of its restructuring.

Chart:

Massachusetts Residential Gas v. Oil, 1986-1997

Chart:

Gas Residential Market Share: Number of Heating Customers [4 utilities]

Chart:

Massachusetts Commercial Gas v. Oil, 1986-1995

Charts:

Massachusetts Industrial Gas v. Distaillate Oil, 1986-1995

Massachusetts Industsrial Gas v. Residual Oil, 1986-1995

Conclusion

For all these reasons, the Low Income Network respectfully submits that the Department should revise its proposed rules for the restructuring of the natural gas industry to

• Recognize that action must be taken to assure that all customer sectors benefit from utility industry restructuring,

• Recognize that natural gas customers should receive at least the same price and procedural protections as electricity customers,

• Provide rules for default service,

• Adopt and standardize low-income discounts, and

• Mandate natural gas efficiency programs.

Respectfully submitted,

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1. According to the Boston Globe, citing DOER, this has risen to 21 percent. Peter J. Howe, "Power cost may spark competition," Boston Globe at D1, D3 (Jan. 7, 2000).

2. [2] U.S. Bureau of Labor Statistics, Consumer Price Index (local residential telephone component); AT&T prices for ten-minute cross-country call (as filed with and compiled by Federal Communications Commission) in Waldon and Lande, Reference Book of Rates, Price Indices and Household Expenditures for Telephone Service (FCC 1997). Long distance operators say the overall long distance decreases are much larger than 50%. T.Price, (CEO, MCI), letter to the editor, p. 20 (Washington Post Jan. 31, 1997) (70%).

3. [3] E.g., R. Crandall and J. Ellig, "Electric restructuring and Consumer Interests: Lessons from Other Industries," The Electricity Journal, pp. 12 et seq., at p. 14 (Jan. 1998).

4. [4] Robert Kuttner, Everything for Sale at 258, 263-264 (Knopf 1997). The fraction of flights using jets has also decreased at small and medium-sized airports, as well as at some large airports. U.S. Government Accounting Office, "Airline Deregulation: Changes in Airfares, Service, and Safety at Small, Medium-Sized and Large Communities" (GAO-RCED-96-79) at 47-49 (1996). Non-stop and one-stop service at some large airports is down sharply (e.g., Washington National: number of non-stop destinations down 18%, one-stops down 42%; Kennedy: non-stops down 24%, one-stops down 63%). id. at 74-75.

5. [5] Other large cities with net price increases since deregulation include Atlanta (+6%), Dallas-Ft. Worth (+10%), Detroit (+5%), Minneapolis (+17%), Chicago (O'Hare, +1%), and Philadelphia (+1%). U.S. Government Accounting Office, "Airline Deregulation: Changes in Airfares, Service, and Safety at Small, Medium-Sized and Large Communities" (GAO-RCED-96-79) at 29-30, 60-63 (1996).

6. [6] In 1996, business fares increased about 25% while leisure ticket prices declined slightly. S. McCartney, "Business Fares Increase Even as Leisure Travel Keeps Getting Cheaper," Wall St. Journal, p. A1 (Nov. 3, 1997). Four months later, the Journal reported business fares up 21% over the previous year, leisure fares up 16%. "Trends in Travel Costs," Wall St. Journal, p. B9 (March 6, 1996). Kuttner describes "Astronomical and Capricious Fares" as another result of deregulation. Robert Kuttner, Everything for Sale, p. 265 (Knopf 1997).

7. [7] P.G. Gosselin, "Companies find more money in fewer customers," Boston Globe, p. A1 (March 9, 1998).

8. There should also be specific rules against all means of redlining.

9. Proposed §13.04(4)(d) contains a typographical error, specifying the purchase of "electricity" when presumably "natural gas" is intended.

10. To illustrate the seriousness of the problem that could lie ahead, the Georgia Public Service Commission has received 2600 complaints about slamming in the slightly more than a year since Georgia restructured its natural gas industry. Atlanta Journal-Constitution (Jan 14, 2000).

11. At the time of the latest winter electricity peak in New England, January 14-15, 2000, natural gas was also in demand for the same reason -- unusually cold temperatures. Natural gas was in such high demand that low pressures made rationing necessary and gassupply was thus unavailable to interruptible and electricity generating customers. E.g., Hartford Courtant and Boston Globe (Jan. 22, 2000).